IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.17532 of 2018
Date of Decision:19.07.2018

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Surinderpal Singh and another

. . . . . Petitioners

Vs.

State of Punjab and others

. . . . . Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.H.S. Brar, Advocate,
for the petitioners.

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RAKESH KUMAR JAIN, J.

The petitioners have challenged the order dated 15.9.2015 passed by the District Collector-cum-Deputy Commissioner, Sri Muktsar Sahib and the order dated 6.10.2017 passed by the Commissioner, Ferozepur Division, Ferozepur.

In brief, the petitioners purchased the land measuring 2 kanals on 25.04.2005 in an open auction held by the Punjab Financial Corporation [for short 'the Corporation'], as a residential property. The auditor raised an objection that though the property has been reflected as residential but it was commercial because hotel was constructed on the said land as M/s Kainat Hoteliers Private Limited had taken loan from the Corporation for the construction of the hotel. The auditor thus found deficiency of stamp duty of ₹6,77,070/-. The said property was purchased by the petitioners for a consideration of ₹25,89,000/- by affixing the stamp duty of ₹233010/- but the auditor had found that since the property was commercial, therefore, the stamp duty paid, on the rates of residential property, was not proper and deficiency of ₹6,77,070/- was found, which was upheld by the Collector vide his order dated 31.5.2007. The said order was challenged by the petitioners in an appeal before the Commissioner, Ferozepur Division, Ferozepur which was dismissed on 29.01.2008. The Commissioner found that the said land was purchased for the construction of the hotel and the list attached with the sale deed also showed that all the furniture and other electric equipments can be used in a hotel and not in a house. Both the orders of the Collector and the Commissioner were challenged by the petitioners by way of CWP No.13213 of 2008 before the Division Bench of this Court which was dismissed by a detailed order dated 22.9.2008. The finding recorded by the Division Bench of this Court is as under:

> *"We have heard learned counsel for the parties and do not find any merit in the present writ petition. It is well known that the sale of property by the financial institution is a distress sale. Though the price offered is the maximum price paid by a willing purchaser, but the said price is not indicative of the true market value. The Court auction sales are surrounded by innumerable contingencies and, therefore, the maximum bid in the said Court sale is not binding on the collector for the purpose of stamp duty is payable on the market value as per collector's rate on the date of registration of the instrument. Such is the view taken by us in CWP No.11530 of 2005 titled Sukhjit Singh Cheema, Advocate Vs. Punjab Urban Planning and Development Authority,*

> *Chandigarh and others, deciding on 18.9.2008.*
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> *Still further, the property has been sold by the Punjab Financial Corporation. The Corporation advance loan for commercial ventures. The nature of the property, goods seized and the facts that the sale was by the Punjab Financial Corporation shows that it was only a commercial property and, thus the petitioners have been rightly called upon to make up deficiency in the stamp duty.*
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> *In view of the above, we do not find any merit in the present writ petition. The same is dismissed.*

The petitioners challenged the order passed by the Division Bench of this Court by way of Civil Appeal No.2459 of 2014 in which the Hon'ble Supreme Court passed the following order: -

> *"1. Shri Nidhesh Gupta, learned senior counsel appearing for the appellants, on instructions, seeks permission of this Court to withdraw this appeal with liberty to approach appropriate authorities.*
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> *2. Permission sought for is granted.*
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> *3. The Civil Appeal is disposed of as withdrawn with liberty to the appellants to approach appropriate authorities for*

appropriate relief(s) by filing appropriate petition(s)."

Thereafter, the petitioners approached the District Collector-cum-Deputy Commissioner, Shri Muktsar Sahib by way of applications dated 31.8.2015 and 3.9.2015 requesting him that in view of the Punjab Government Notification dated 31.3.2010, the deficiency of stamp duty and registration fee should be exempted. The notification, relied upon by the petitioners, is as under: -

"Punjab Govt. Gaz (Extra.). March 31, 2010
(CHTR 10, 1932 SAKA)
DEPARTMENT OF REVENUE AND REHABILITATION
NOTIFICATION
The 31st March, 2010

No.GSR 16/C.A.2/1899/S.75/Amd/4/2010 – In exercise of the powers conferred by Section 75 of the Indian Stamp Act, 1899 (Central Act No.2 of 1899), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following rules further to amend the Punjab Stamp (Dealing of Under-valued instructions) Rules, 1983, namely: -

RULES

1. *These rules may be called the Punjab Stamp (Dealing of Under-valued Instruments) Rules, First Amendment, Rules, 2010.*
2. *In the Punjab Stamp (dealing of Under-valued Instruments) Rules, 1983 (hereinafter referred to as the said rules), in rule 3-A, the Explanation shall be omitted.*

> 3. *In the said rules, after rule 3-A, the following rule shall be inserted namely:-*
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> *"3-B. Notwithstanding anything contained in rule 3-A, the rate fixed for allotment or public auction of an immoveable property by the Government of a public sector undertaking or a local body shall be deemed to be the Collector's rate (as fixed under rule 3-A) of such property, and the stamp duty shall be charged for registration of the instruments of such property or the rate, so fixed, at the time of execution of the first conveyance deed provided it is got registered up to the 30th day of June, 2010, whole of the payment of such property has been made or within a period of three months from the date of payment of last installment, as per the schedule, fixed for payment of the allotment or auction price, as the case may be."*
>
> *Romila Dubey,*
> *Financial Commissioner, Revenue and Secretary to Government of Punjab, Department of Revenue and Rehabilitation"*

The Collector, vide his order dated 15.9.2015, dismissed the applications against which the petitioners filed the statutory appeal under Section 47A(4) of the Indian Stamp Act, 1899 [for short 'the Act'] (applicable to Punjab). The said appeal was dismissed by the Commissioner, Ferozepur Division, Ferozepur by the impugned order dated

6.10.2017 and dealt with the notification on which the sole reference was placed by the petitioners, in the following manner: -

> *"A bare reading of the notification shows that the same is applicable to such sale deeds registered during the period 31.3.2010 to 30.06.2010. Therefore, the appellants cannot claim any relief under Punjab Government Notification dated 31.3.2010 as the appellants had purchased property in question vide registered sale deed No.260 dated 25.4.2005 i.e. much before the issue of notification dated 31.3.2010. Hence, the appeal is dismissed being devoid of any merit."*

Although, learned counsel for the petitioners had opened his argument, relying upon the notification dated 31.3.2010, which has rightly been dealt with by the appellate authority and I am of the considered opinion as well that there is no error therein, the petitioners have then referred to a decision of the Supreme Court rendered in the case of ***"V.N. Devadoss** Vs. **Chief Revenue Control Officer-cum-Ins. and others"*** *2009(3) RCR (Civil) 496* to contend that the petitioners would be liable to pay the stamp duty on the price on which the property was sold in the open market.

I have heard learned counsel for the petitioners in this regard but I do not agree with this contention because the petitioners had paid the stamp duty on the sale of the property, purchased in an open auction, purported to have been sold as a residential property though it was a commercial property as held by the Division Bench of this Court vide its order dated 22.9.2018 passed in CWP No.13213 of 2008, referred to in the earlier part of this order and the appeal filed against the said order was withdrawn by the petitioners, when apparently they could not convince the Hon'ble Supreme Court, to approach the appropriate authorities again, meaning thereby, the order passed by the Division Bench of this Court dated 22.9.2018 in CWP No.13213 of 2008 remain intact and operative. In the case of ***V.N. Devadoss (Supra)***, relied upon by the petitioners, the Hon'ble Supreme Court was of the view that since the property was sold in open auction, therefore, there was no intention to defraud the revenue or non-disclosure of the correct price but the facts of that case was altogether different from the facts of the present case as in the present case there has been an effort to defraud the revenue by concealing the correct nature of the property at the time of its sale because it was sold as residential property whereas, it was a hotel and a finding of fact has been recorded by the Division Bench of this Court vide its order dated 22.9.2018 passed in CWP No.13213 of 2008 that *"still further, the property has been sold by the Punjab Financial Corporation. The Corporation advance loan for commercial ventures. The nature of the property, goods seized and the facts that the sale was by the Punjab Financial Corporation shows that it was only a commercial property and, thus the petitioners have been rightly called upon to make up deficiency in the stamp duty.*

Thus, am of the considered opinion that there is hardly any merit in this petition for the purpose of interference and the same is thus hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

19.07.2018
Vivek

Whether speaking /reasoned : *Yes/No*
Whether Reportable : *Yes/No*